IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 37173 of 2004(A)

OS.292/2000 of MUNSIFF COURT,VARKALA

.....

PETITIONER:

SATHYAPRABHA, KUNNUPURATHU VEEDU,
EALIYAM VILAKOM, CHERUNNIYOOR VILLAGE,
VARKALA, TRIVANDRUM DISTRICT.

BY ADV. SRI.R.KRISHNAKUMAR (CHERTHALA)

RESPONDENTS:

---

1. ASOKAN, S.S.NIVAS, ELIYAM VILAKOM,
CHERUNNIYOOR VILLAGE, VARKALA, TRIVANDRUM DIST.

2. SOBHA, S.S.NIVAS, ELIYAM VILAKOM,
CHERUNNIYOOR VILLAGE, VARKALA,
TRIVANDRUM DISTRICT.

BY ADV. SRI.SIBY MATHEW
SRI.A.A.MOHAMMED NAZIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1: TRUE COPY OF THE PLAINT DT. 23.8.2000 IN O.S.292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P2: -DO- OF THE WRITTEN STATEMENT OR CLAIM DT. 15/2/2001 SUBMITTED BY THE RESPONDENTS IN O.S. 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P3: -DO- OF THE I.A. 1635/00 DT. 23.8.00 SUBMITTED BY THE PETITIONER IN O.S. 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P4: -DO- OF THE I.A. NO: 443/2001 DT. 16.2.2001 SUBMITTED BY THE RESPONDENTS IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P5: -DO- OF THE I.A. NO: 1308/02 DT. 17.7.2002 SUBMITTED BY THE PETITIONER IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P6: -DO- OF THE ORDER DT.23.7.02 IN I.A. NO: 1308/2002 IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P7: -DO- OF THE REPORT DT. 24.10.2002 IN O.S NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P7A: -DO- OF THE PLAN PREPARED BY THE SURVEYOR IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P8: -DO- OF THE ORDER DT. 29.11.2002 IN C.R.P. NO: 2211/02 OF THIS HONOURABLE COURT

EXT.P9: -DO- OF THE OBJECTION DT. 21.3.2002 TO EXT.P7 BY THE PETITIONER IN O.S. NO: 209/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P10: -DO- OF THE OBJECTION DT. 21.3.2002 TO EXT.P7 SUBMITTED BY THE RESPONDENTS IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P11: -DO- OF THE I.A. NO: 806/2003 DT. 21.3.2003 IN O.S. NO: 292/00 OF THE MUNSIFF'S COURT, VARKALA

EXT.P12: -DO- OF THE ORDER DT. 27.10.2004 IN I.A. NO: 806/2003 OF THE MUNSIFF'S COURT, VARKALA

jj /TRUE COPY/

P.A. TO JUDGE

M.N.KRISHNAN, J.

WP(C)No. 37173 OF 2004 A

Dated this the 3rd July, 2007.

JUDGMENT

This writ petition is filed to issue a writ of certiorari against Ext.P12 order. The challenge is against the order in I.A.806/03 in O.S.292/00. It was an application filed by the plaintiff to set aside the commissioner's plan and report prepared with the assistance of a retired taluk surveyor as per the directions of the court. A perusal of the order of the learned Munsiff would reveal that when the commissioner went to inspect the property with the said surveyor the plaintiff gave a representation that the property need not be measured. Then at the request of the defendant the property was measured and a report has been submitted. It is against that report and plan the present petition is filed to set aside the same. A perusal of the order of the court below would show that it was DEALT with the propriety of the plaintiff rather than to apply its mind regarding the correctness of the plan. There was an adamant attitude of the plaintiff to have the plan prepared only with the assistance of a village officer and not a retired surveyor. That has created all the problems and the present plan and report is prepared by the commissioner with the assistance

of a retired surveyor as per the directions of the court. If the plaintiff is able to establish before the court that the present plan and report submitted are not in accordance with the documents, it is a matter that has to be considered by the court. Similarly resisting the application, defendants are also at liberty to adduce and state that it is strictly in conformity with the documents and surveyor's plan. Therefore the order under challenge is set aside and the matter is remitted back to the trial court with a direction to the court to consider this application on merits after allowing both parties to adduce evidence in support of their respective contentions. The court shall consider whether there is anything material which has to be corrected or remitted or has to be set aside. Parties are directed to appear before the court below on 3.8.2007. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj